



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 624983

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, and in the alternative, because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a

full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed July 12, 2022 (), the Administrative Law Judge sustained, effective November 17, 2021, the employer's objection and overruled the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time ultrasound technician by the employer, a hospital, from April 1, 2019 through November 16, 2021. She was unable to perform her duties remotely as her job could only be performed in-person.

On August 20, 2021, the employer notified its employees, including the claimant, that they must receive a COVID-19 vaccination by September 27, 2021 or have a medical or religious exemption. The requirement was in order that the employer could comply with the New York State Department of Health vaccine mandate. Further, on August 30, 2021, the employer notified its employees, including the claimant, that failure to receive either a vaccine or an exemption would result in separation from employment.

On September 13, 2021, the claimant applied for a medical exemption as she was attempting to conceive a baby and she had a history of heavy menstrual bleeding. On September 17, 2021, the employer denied her medical exemption request.

On September 28, 2021, the claimant applied for a religious exemption. She was permitted to continue working pending the resolution of her religious exemption request.

In October or November, the claimant learned she was pregnant. Her obstetrician/gynecologist advised the claimant not to receive the COVID-19 vaccines due to potential adverse effects on the developing fetus.

On November 17, 2021, the employer suspended the claimant without pay because she did not receive a vaccine and then discharged her on November 29, 2021.

OPINION: The credible evidence establishes that the employer suspended the claimant without pay and then discharged her because she did not receive a COVID-19 vaccine which she knew was required as a condition of her continued employment. The employer, a healthcare facility, could lawfully impose a vaccine mandate on its employees to comply with the New York State Department of Health vaccine mandate. Therefore, the claimant's decision to not receive a COVID-19 vaccine constitutes a voluntary separation from employment for unemployment insurance purposes. Further, the credible evidence also establishes that the claimant's decision was based upon her obstetrician/gynecologist's medical advice that getting vaccinated could be detrimental to her developing fetus (see Appeal Board No. 622158). Following her doctor's advice is a compelling medical reason for her decision not to be vaccinated thus she has established good cause for her voluntary separation from employment under the Labor Law. Accordingly, we conclude that the claimant was separated from employment under nondisqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that

employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determinations, holding the claimant eligible to receive benefits, are sustained.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER